THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19668 of 2006

26.9.2006

Between:

M/s.Transworld Garnet India Private Limited,
Having its Project Office at Dhandi Street, C.B.Road,
Srikakulam, represented by its Project Manager
Sri K.P.Reddy, S/o.Late Sri K.V.Reddy

… Petitioner

AND

The Secretary to Government of Andhra Pradesh,
Department of Industries and Commerce, Secretariat
Hyderabad and another

… Respondents

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WRIT PETITION No.19668 of 2006

ORDER:

M/s.Transworld Garnet India Private Limited is a company incorporated under the Indian Companies Act, 1956. The petitioner company was sanctioned mining lease for garnet for an extent of 95.085 hectares from the confluence of Nagavalli River upto Balaramapuram Village of Srikakulam District for a period of thirty (30) years. The sanction was accorded by the Government in G.O.Ms.No.7, dated 05.1.2002 for mining garnet. The petitioner company entered into the agreement of lease in Form K prescribed under the Mineral Concession Rules, 1960 (the Rules, for brevity) and commenced its operation in 2002. It appears that the beach sand, which is extracted from mining area also contains garnet, ilmenite, rutile, leucoxene, zircon, sillimanite and monazite, which are the specified substances, was regulated by the Automic Energy Act, 1962, Automic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules, 1984 and Beach Sand Policy, 1988. In its post mining process, the petitioner company extracts garnet and markets it. The other substances are statedly stocked in a particular area on the mining site. Be that as it is, so as to exploit the other minerals apart from garnet, in the same mining area, the petitioner made as many as thirteen (13) applications to the first respondent for grant of mining lease, which are statedly pending before the first respondent.

The A.P. Mineral Development Corporation (APMDC) – the second respondent herein; issued notification dated 03.8.2005 inviting Expression of Interest (EoI) to exploit heavy mineral beach sands comprising ilmenite in Gara Mandal of Srikakulam District over an extent of 95.085 hectares and 673.180 hectares applied for lease by

the APMDC. The notification also mentions that the company was already granted mining lease for garnet and that APMDC intends to exploit ilmenite etc., under Joint Venture (JV) Participation. Aggrieved by this notification, the petitioner company filed the instant writ petition seeking three reliefs:

(i) to declare the action of second respondent in issuing the notification dated 03.8.2005 inviting applications for JVP for mining ilmenite etc., in the land leased out to the company and other land;

(ii) to direct the first respondent to consider the application made by the company including the one made on 16.9.2000; and

(iii) to direct the first respondent not to grant mining lease to the second respondent without complying with Rule 24(4) of the Mineral Concession Rules.

At the preliminary hearing, the learned Government Pleader appeared and opposed the writ petition. He however was not able to say whether the petitioner made any application seeking mining lease for ilmenite also and whether such application is pending. There was also no information as to whether APMDC made application to the Government seeking mining lease for ilmenite in land admeasuring 95.085 hectares, which is already granted to the company for mining garnet. Therefore, the matter was adjourned to enable learned Standing Counsel for APMDC to obtain instructions in the matter. Today, learned Standing Counsel for APMDC has produced before this Court the application made by APMDC in Form No.1 under Rule 22(1) of the Rules seeking mining lease for ilmenite in respect of the land admeasuring Acs.95.085 hectares leased out to the petitioner company. The second application made by APMDC is also produced before this Court, which is in respect of 673.180 hectares for confluence of River Nagavali upto survey No.1042 for grant of mining lease for heavy mineral beach sands. The said applications are made part of the record. It is also no denial that these applications are still pending before the first respondent.

Learned Counsel for the petitioner submits that when the petitioner has made as many as thirteen applications seeking grant of mining lease for ilmenite as well, keeping them pending is illegal and arbitrary. He also submits that without issuing notice under Rule 24(4) of the Rules, the first respondent cannot sanction any mining lease to APMDC.

The impugned notification dated 03.8.2005 was issued by APMDC inviting EoI for selection of JV Partner, as second respondent intends to establish mineral separation plant to separate ilmenite and value added unit under JV Partnership with APMDC. The petitioner company has nothing to do with the business module, which APMDC

desires to adopt in its endeavour to establish mining separation plant for ilmenite. Therefore, insofar as the challenge to the impugned notification is concerned, the petitioner has no *locus standi*. Secondly, as per G.O.Ms.No.7, dated 05.1.2002 whereby and whereunder the Government sanctioned the grant of mining lease for garnet to the petitioner, the petitioner company not being wholly owned Indian company cannot engage the separation and sale of prescribed substances in accordance with the Policy Resolution of the Government of India, Department of Automic Energy No.8/1[1]/97-PSU, dated 06.10.1998. In the case of prescribed substances/automic minerals, though the petitioner is entitled to obtain licence from the Department of Automic Energy as required under the Automic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules, 1984, mere pendency of the applications made by the petitioner cannot give any right to the petitioner to seek a direction to the first respondent to dispose of their applications. Insofar as third aspect of the matter is concerned, the rule position is very clear. Rules 24 (4) and (5) of the Rules read as under.

> **24. Disposal of application for mining lease:--**
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> (4) Where an application for a mining lease for a mineral or minerals not specified in the existing mining lease or mining leases is made for the whole or part of the area held under mining lease by a person other than the lessee, the State Government shall notify that fact by Registered Post/Acknowledgement due to the person who already holds mining leases for another mineral in the land applied for.
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> (5)(a) If on receipt of the information referred to in sub-rule (4), from the State Government, the lessee applies either for prospecting licence or mining lease for newly discovered mineral or minerals within six months from the date of communication of the information by the State Government, the lessee shall be preferred in respect of such grant.
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> (b) If the lessee fails to apply for prospecting licence or mining lease within six months, then this fact will be intimated to the applicant by the State Government and the State Government will consider the original application in accordance with the rules.

Though the above rule does not confer any right on the existing mining lessee in absolute terms, it certainly casts a duty on the State Government to notify the fact of an application for mining lease for mineral or minerals not specified in the existing mining lease. To that extent, the petitioner company is entitled for a notice under Section 24(1) of the Rules. This position is not seriously disputed nor denied.

In limine, therefore, the first respondent is directed to notify the petitioner company, as and when the application made by APMDC for ilmenite and heavy mineral beach sands is taken up for grant of mining lease. The writ petition, with the above observations, is accordingly

dismissed. No costs.

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(**V.V.S.RAO,J**)

September 26, 2006.
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